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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,125	10/17/2001	James N. Weinstein	5506	9344

7590

11/19/2003

John O'Toole, Esq.
General Mills, Inc.
P.O. Box 1113
Minneapolis, MN 55440

EXAMINER

DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,125

Applicant(s)

WEINSTEIN ET AL.

Examiner

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11-31 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 26-31 and 34-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-14, 17, 18, 21 and 22 is/are rejected.
- 7) ☒ Claim(s) 15, 16, 19, 20 and 23-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Election/Restrictions***

1. Applicant's election with traverse of claims 11-25 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the combination of the rotary cutter of claims 11-25 and the assembly of claims 1-10 and 26-33 (9-10 and 32-33 are now cancelled) produce synergistic results and thus should be searched and examined together. It is also on the grounds that the two inventions have been reduced into practice in a single embodiment and that the amount of additional work to consider all independent claims would be minimal. This is not found persuasive because the subcombination can be used outside of the die cutter head art, such as in an assembly for rotating a buffing mechanism or any mechanism with a drive for rotating and thus require a search separate from the search for the combination. Additionally, the combination does not require the particulars of the subcombination, including pulleys, because it is well known in the art to rotate a die cutter head by a rotating shaft connected to a motor. While the combination and subcombination can be used together, the restriction of 6/26/03 shows that they do not have to be used together and the additional work of searching the subcombination would not be minimal because additional classes would have to be searched, including class 74. Furthermore, the Applicant's specification at page 13, line 6-9 demonstrates that the rotary cutter can be driven without the claimed pulley system.

The requirement is still deemed proper and is therefore made FINAL.

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2. Newly submitted claims 34-37 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the subject matter of new claims 34-37 are appropriate for the subcombination and a search of the new claims would be an undue burden. In order to further set forth the reasons that the new claims are appropriate for the subcombination, a reiteration of the previous restriction (with new claims included, but canceled claims removed) follows:

- I. Claims 1-8 and 26-31, 34-37, drawn to an assembly for a drive, are classified in class 74.
- II. Claims 11-25, drawn to rotary cutter with die, are classified in class 425, subclass 313.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require pulleys or a pivotal cover. The subcombination has separate utility such as an assembly for rotating a buffing mechanism.

3. Since applicant has received a requirement for restriction for the originally presented invention, and has elected the combination, this invention has been constructively elected by original presentation for prosecution on the merits.

Accordingly, new claims 34-37 are withdrawn from consideration as being directed to a non-elected invention. (Since claims 2-9 and 27-31 have been made dependent on either claim 34 or 36 they also remain withdrawn from consideration.)

Information Disclosure Statement

4. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892 or initialed by the Examiner on a form PTO-1449, they have not been considered.

5. The information disclosure statement filed 1/4/02 complies with the provisions of 37 CFR 1.97, 1.98 and MPEP 609. It has been placed in the application file and the information referred to therein has been considered as to its merits.

6. Regarding the IDS of 1/4/02, the Examiner notes that an error existed in the listing of patent US 4,722,357 wherein the name of the inventor was listed as Bormiolo. The correct inventor of US 4,722,357 is Wynosky; Examiner Del Sole has corrected this on the form PTO-1449. In an attempt to locate the patent that may have been intended, Examiner Del Sole has reviewed patent US 4,722,557, having inventor Bormioli; this reference is listed on the form PTO-892.

Oath/Declaration

7. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The specification to which the oath or declaration is directed has not been adequately identified. See MPEP § 601.01(a).

Specification

8. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

9. The abstract of the disclosure is objected to because **a)** it is over 150 words (the Examiner counts 165 words not including the reference numbers and notes that the abstract currently includes a description of the invention of the non-elected and withdrawn claims). Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Altenburg (4,251,198).

Altenburg teaches a rotary cutter for a die (Fig 1) having in combination a cutter head (Fig 2) adapted to be rotated about an axis (Fig 1, #12) relative to the die (Fig 1; the die is a positive structural limitation in this claim, in that the die does not rotate about an axis relative to the cutter head), with the cutter head including a periphery (Fig 2, #18); at least a first blade holder (Fig 2, #26) extending radially from the cutter head beyond the periphery, with the blade holder including a knife support surface (Fig 4, #36) extending in a plane intersecting with the axis at an angle other than perpendicular (Fig 3); and a knife (Fig 2, #28) removably attached to the blade holder at a single, nonvariable and nonadjustable potential position (Fig 4, the fasteners #32 removably attach the knife at the single, nonvariable and nonadjustable potential position), with the knife in the single, nonvariable and nonadjustable potential position abutting with the knife support surface (Fig 4) and being held at the angle of the knife support surface (Fig 4), with the blade holder and the cutter head being integrally formed as a single component such that the angle of the knife support surface and the knife attached to the blade holder cannot be varied relative to the axis.

12. Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams et al (5,624,688).

Adams et al teach a rotary cutter for a die (Fig 1) having in combination a cutter head (Fig 2, #44) adapted to be rotated about an axis (Fig 1, #42) relative to the die (Fig 1, #18; the die is a positive structural limitation in this claim, in that the die does not rotate about an axis relative to the cutter head), with the cutter head including a periphery (Fig 2, #46); at least a first blade holder (Fig 2, #50) extending radially from the cutter head beyond the periphery, with the blade holder including a knife support surface (Fig 2, #52) extending in a plane intersecting with the axis at an angle other than perpendicular (Fig 5); a knife (Fig 1, #48) removably attached to the blade holder at a single, nonvariable and nonadjustable potential position (Fig 2, fasteners removably attach the knife at the single, nonvariable and nonadjustable potential position through bore #54; col 3, lines 59 and 63), with the knife in the single, nonvariable and nonadjustable potential position abutting with the knife support surface (Fig 1) and being held at the angle of the knife support surface (Fig 1); with the blade holder and the cutter head being integrally formed as a single component such that the angle of the knife support surface and the knife attached to the blade holder cannot be varied relative to the axis; and shoulders extending from opposite edges of the knife support surface and spaced from the knife support surface for slideable receipt of the knife parallel to the knife support surface (Fig 2 and Fig 5).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claims 13-14, 17-18 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al (5,624,688) in view of Parrish et al (6,105,260).

Adams et al teach the invention as discussed above including the knife including an aperture (col 3, lines 59-63) and including a cutting edge, a rear edge, and first and second side edges, with the aperture begin spaced from the cutting, rear and side edges (Fig 1); the knife being restrained to slide along a single slide direction parallel to the knife support surface (Fig 5).

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Adams et al fail to teach the blade holder including a detent for receipt in the aperture for selectively preventing sliding of the knife parallel to the support surface along the single slide direction; and a groove formed in one of the knife and the knife support surface (the limitation "adapted to receive a tool between the knife and the knife support surface to flex the knife to remove the detent from the aperture" is a process limitation that does not further limit the structure of the rotary cutter because while the knife and groove are positive structural recitations of the rotary cutter, the tool and its intended use are not).

Parrish et al teach knife (Fig 2, #12) including an aperture (Fig 2, #26); blade holder (Fig 2, #10) including a detent (Fig 2, #50) for receipt in the aperture for selectively preventing sliding of the knife parallel to the support surface along the single slide direction; and the knife including a cutting edge, a rear edge, and first and second side edges, with the aperture begin spaced from the cutting, rear and side edges (Fig 2); the knife being restrained to slide along a single slide direction parallel to the knife support surface (Fig 2); a groove (Fig 3, #44 and #46) formed in the knife support surface (Fig 3, #40) for the purpose of holding the knife in alignment with the blade holder (col 1, line 40 - col 2, line 33 and col 3, lines 60-65).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Adams et al with the blade holder including a detent for receipt in the aperture and having a groove formed in the knife support surface as taught by Parrish et al because the detent and groove enable

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alignment of the knife with the blade holder without the use of a separate (not integral with the blade holder) fastener.

Allowable Subject Matter

17. Claims 15-16, 19-20 and 23-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest the detent of a blade holder for receipt in an aperture of a knife of a rotary cutter of a die, wherein the detent is integrally formed as a single component with the blade holder's knife support surface and has an inclined surface extending at an angle to the knife support surface terminating in a stop surface extending generally perpendicular to the knife support surface.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (703) 308-6295 (after 12/8/03 the Mr. Del Sole's new number is (571)272-1130). The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (703) 308-0457 (after 12/8/03 Ms. Walker's new number is (571)272-1151). The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


J.S.D.

November 17, 2003